JOINT ETHICS & LEGAL ISSUES

DAIG Deputy Legal Advisor
703-601-1095

Combatant Command and Joint Inspector General Course

Enabling Learning Objectives (ELOs)

- Describe the IG-Staff Judge Advocate relationship.
- Describe the process for seeking clarification of an ethics issue.
- Describe the standards of conduct pertaining to the use of government resources, gifts, private commercial activities, and private organizations.

Which Standard to Use?

- Unified/Joint HQs – DoD/Joint publications/regulations or statutes
  - Executive Agent service's standards for fiscal matters
- Units assigned – service specific regulations

Scenario 1 -

- Army Official Representation Funds (ORF) provided to a Joint Commander where the Army is the Executive Agent –

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- Army Official Representation Funds (ORF) provided to a Joint Commander where the Army is the Executive Agent –
  - Use AR 37-47, “Representation Funds of the Secretary of the Army”

Scenario 2 -

- In Army unit assigned to COCOM, brigade commander’s driver takes a unit vehicle to through the Burger King drive-through -

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- In Army unit assigned to COCOM, brigade commander's driver takes a unit vehicle to through the Burger King drive-through
  - AR 58-1, para. 2-4, "Official motor vehicle transportation requirements do not include: . . . personal errands or side trips . . ."

Scenario 3 -

- Joint/COCOM commander’s driver takes a military vehicle to the Burger King drive-through -

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- Joint/COCOM commander's driver takes a military vehicle to the Burger King drive-through -
  - DoD 4500.36/R - "Government carriers are to be used for official purposes only; e.g. to further the mission of the Agency."

Standards

- **DoDD 5500.7-R – Joint Ethics Regulation**
  - **Chapter 2 – 5 CFR 2635**
    - **www.usoge.gov/pages/law_regs_fedregs_stats/oge_regs/5cfr2635.html**
- **JFTR/JTR**
- **DOD 4500.36/R, "Management, Acquisition and Use of Motor Vehicles".**
- **DODD 4500.56, "DoD Policy on Use of Government Aircraft and Air Travel".**

IG & SJA

IG RELATIONSHIP WITH SJAs ?

IG's "BEST FRIEND"?

WHO IS IG's POC IN SJA OFFICE?

HOW TO KEEP OUT OF TROUBLE

1. Tell people what the JER says–do not interpret it.

2. Refer people to the command Ethics Counselor -- the source of expertise on the JER.

3. Stay out of the approval/coordination chain.

4. Always try to do the right thing.

STANDARDS OF CONDUCT

- USE OF GOVERNMENT RESOURCES
- GIFTS
- PRIVATE COMMERCIAL ACTIVITIES
- PRIVATE ORGANIZATIONS

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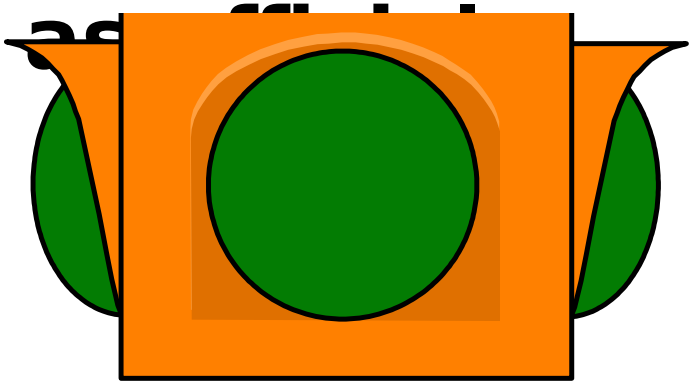
GENERAL RULE

- ***"Employees shall protect and conserve Federal property and shall not use it for other than authorized purposes***
  - ***5 CFR 2635.101(b)(9)***

OFFICIAL

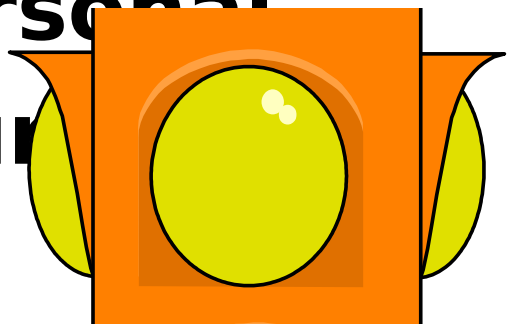
- **Mission essential, or necessary for the performance of agency programs, policies, or operations.**

- **Formally recognized as official**
  (by regulation or statute)**.**



AUTHORIZED

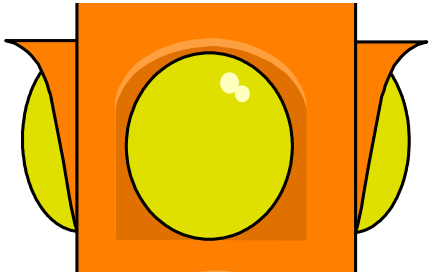
- **When is authorizing personal use of Government resources appropriate?**



- **Who authorizes use of Government time, equipment and resources?**
  - **DoDD 5500.7-R, para. 2-301**

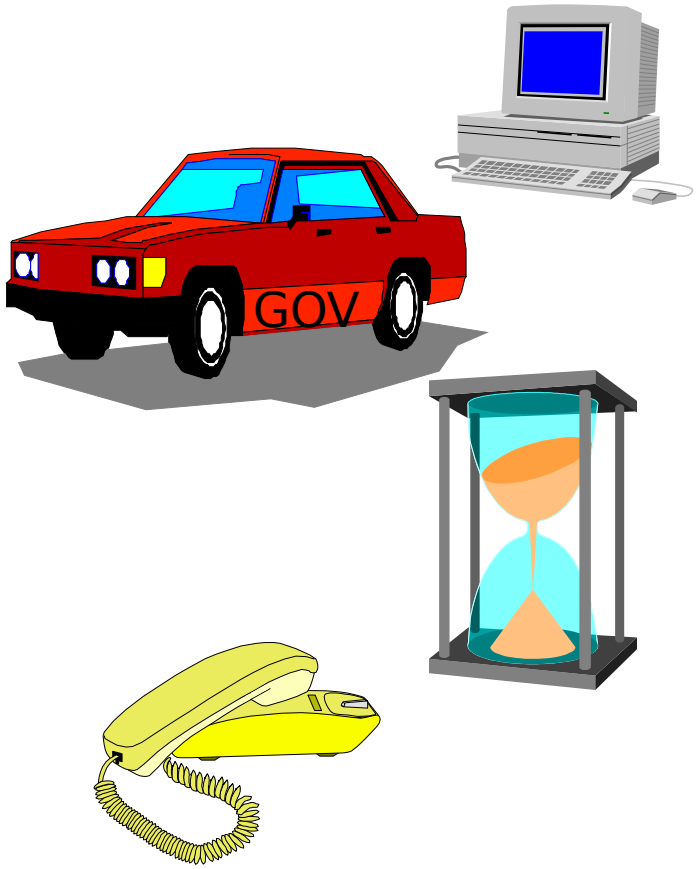
AUTHORIZED

- **Activity must not detract from performance of official duties**
- **Activity must be REASONABLE in duration and frequency**
- **Does not reflect adversely on DoD, serves a legitimate public interest**
- **Activity must use personal time**
- **No significant cost to DoD**
- **Supervisor determination**



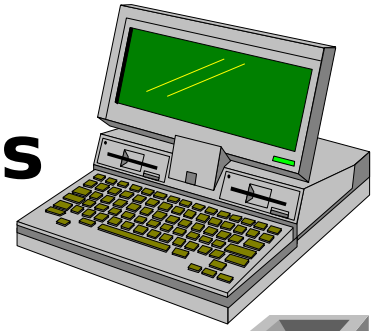
TYPES OF GOVERNMENT RESOURCES

- Equipment
- Time
- Inside Information
- Communications
- Internet Access
- Transportation

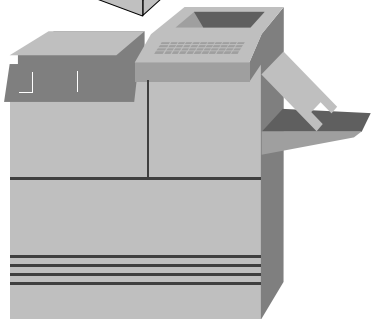


EQUIPMENT
(Computers, Copiers, Printers)

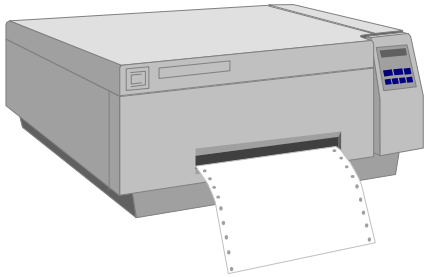
- **Reasonable use--cost, frequency, duration--all depends on how it affects your office**



- **Factors that affect reasonableness** (When used, paper supplied)

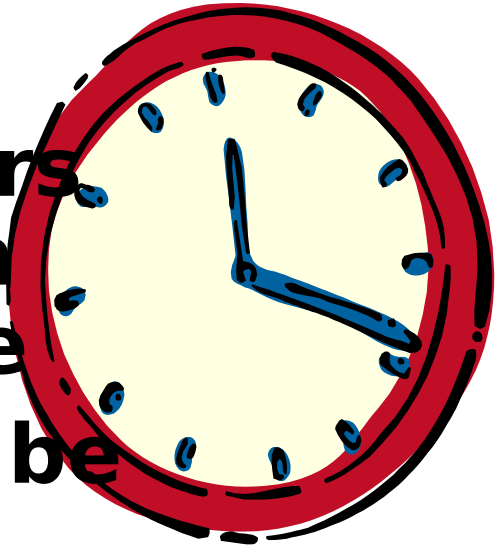


- **Supervisor makes determination**



Personnel

- **Official time is dedicated to the conscientious performance of duties**
- **Union activities on official time are authorized by statute**
- **Official personnel matters may be handled on Government time**
- **Subordinates can never be ordered to work on personal or unofficial matters**

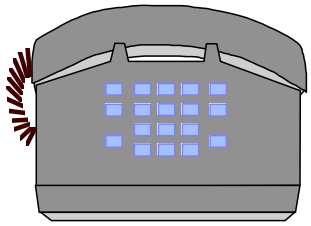


INSIDE INFORMATION

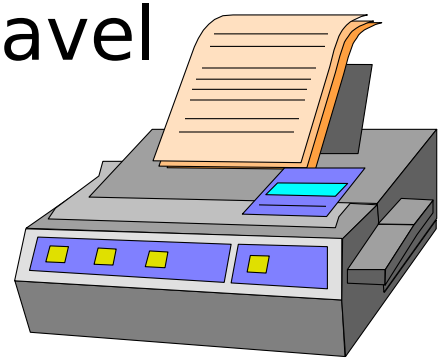
Is information that is:

- Not available to the general public
- Routinely exempt Under FOIA
- Protected by Statute (Privacy Act)
- Trade Secrets/Procurement Sensitive
- Classified
  - 5 CFR 2635.703

COMMUNICATION
(AT GOVERNMENT EXPENSE)



- Genuine personal emergency
- When approved under JTR/JFTR, during extended deployment or TDY
- Notifying family of changes in travel
- As part of an agency transition assistance program



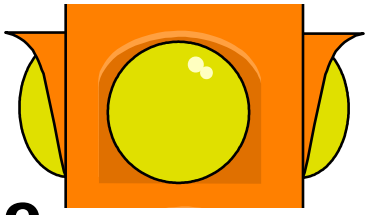
COMMUNICATION
(AT NO GOVERNMENT EXPENSE)

Limited personal communications may be authorized when—

- No adverse impact on official duties
- Reasonable duration and frequency
- Does not adversely reflect on the Govt
- Does not overburden communications
- No significant cost to DoD (no long distance charges)

INTERNET
Individual User

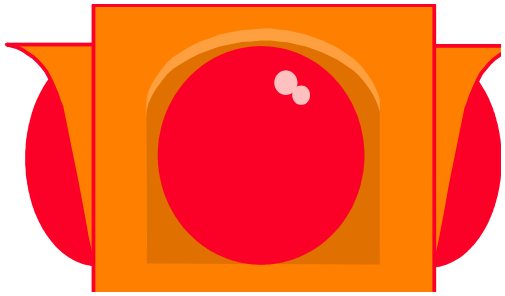
- **PROHIBITED:**
  - **Commercial or personal business**
  - **Chain letters, dirty jokes, ethnic slurs**
  - **- Downloading porn**
  - **- Security violations**



- **MAY BE AUTHORIZED:**
  - **Brief personal messages**
  - **Net search for official/professional use**
  - **Web browsing on personal time**
    - **DoD 5500.7-R, para. 2-301a**

PROHIBITED!

- **Crimes**
- **Commercial Activities**
- **Establishment of Religion**
- **Political Activities**
- **Interference with Mission**
- **Activity reflects adversely on DoD (EEO violations, extremist or sexist activities)**



DoDD 5500.7-R, para 2-301

PRIVACY

Any official or personal use may be monitored by the Government

- E-mail notes
- Internet searches
- Telephone conversations

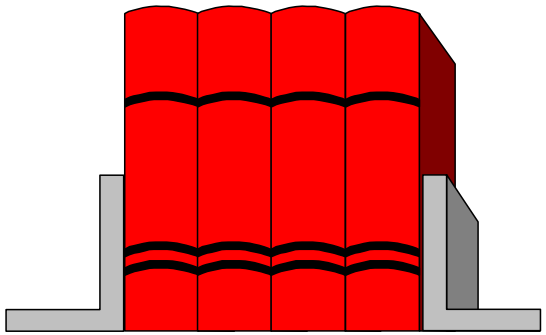
Practical Tip: Treat E-Mail the same as other written documents (Did you know that the public can get copies of E-Mail under FOIA?)

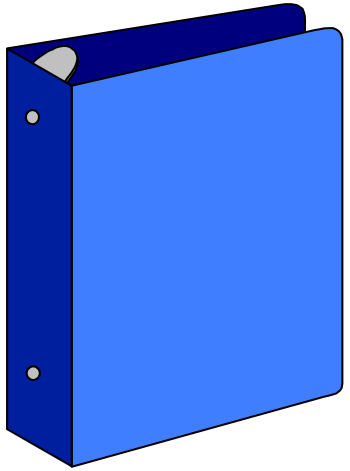
TRANSPORTATION
(Authority)

- **DOD 4500.36-R, "Management, Acquisition and Use of Motor Vehicles".**

- **DODD 4500.56, "DoD Policy on Use of Government Aircraft and Air Travel".**

-Service Regs





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PROHIBITIONS

- **Solicited sales to junior personnel (rank, grade, or position) or their family members**
- **By military member (potential appearance problem if by spouse or family member)**
  - **5 CFR 2635.701**
- **EXAMPLES: Insurance, real estate, cosmetics, vitamins**

NOT PROHIBITED

- **Sale of <u>non-commercial</u> personal or real property**
- **Sales/solicitations in retail establishments off-duty**
- **Junior soldier approaches senior soldier**
- **CAVEAT: In absence of <u>coercion</u> or <u>intimidation</u>**
  - **DoD 5500.7-R, para. 5-409**

CONFLICTING FINANCIAL INTERESTS

- **Criminal conflict of interest statute (18 U.S.C. 208)**
  - **Example: Employee serves on panel to select contractor; spouse's job with contractor depends on govt. contract**
- **SOLUTION: Disqualification, divestiture, or waiver**

Conflict of Interest – Post Federal Employment Restrictions

- **18 USC 207**
  - **Lifetime ban on "particular matter" in which you participated "personally and substantially"**
  - **One year "cooling off" GO/SES**
  - **Two year ban for matters "under your official responsibility"**
- **41 USC 423**
  - **Substantial involvement in a contract award of $10,000,000 or more**

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MILITARY SUPPORT OF POs

- **General Rule – No military support of PO/NFE (DoDD 5500.7-R, para. 3-204)**
- **BUT Exceptions –**
  - **LOGISTICAL SUPPORT (speakers, facilities, equipment) – community relations (DoDD 5500.7-R, para. 3-211)**

MILITARY SUPPORT OF POs

- **General Rule - NO ENDORSEMENT OF FUNDRAISING (DoDD 5500.7-R, para. 210)**
  - **BUT Exceptions: CFC, AER, disaster appeals, groups of DoD employees & dependents (DoDD 5500.7-R, para. 3-209/210)**

- **CO-SPONSORSHIP: Conferences, seminars – PO is recognized scientific, technical, educational, or professional group (DoDD 5500.7-R, para. 3-206)**

POs OPERATING ON INSTALLATIONS

- **No endorsement, preferential treatment DoDD 5500.7-R, para. 3-209)**
- **No management by DoD personnel in official capacity (DoDD 5500.7-R, para. 3-201)**
- **No use of title or position**
- **Self-sustaining (pays utilities, etc.)**

“SPECIAL STATUS” POs

- **NATIONAL MILITARY ASSOCIATIONS**
- **FEDERALLY-SANCTIONED**
- **BOY SCOUTS/GIRL SCOUTS**

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GIFTS

- **GIFTS FROM OUTSIDE SOURCES**
- **FOREIGN GIFTS**
- **TRAVEL GRATUITIES**
- **GIFTS FROM SUBORDINATES**
- **FREQUENT TRAVELER BENEFITS**

GIFTS FROM OUTSIDE SOURCES

- **IS IT A GIFT?**
- **IS IT A PROHIBITED SOURCE GIFT?**
- **DOES AN EXCEPTION APPLY?**
- **SHOULD AN EXCEPTION BE USED?**

IS IT A GIFT?

(5 C.F.R. 2635.203)

- **What is "non-gift?" The old "cheap and worthless" rule reappears.**
- **"Items with little intrinsic value intended solely for presentation."**
- **Plaques, coffee mugs, trophies**
- **Also, coffee and/or donuts**
  - **5 CFR 2635.203**

IS IT A PROHIBITED SOURCE GIFT?

- **Given by someone who seeks to do business with DoD (5 C.F.R. 2635.203(d))**
- **Or given because of the recipient's official position (5 C.F.R. 26 203(e))**

DOES AN EXCEPTION APPLY?

- **$20 or less ($50 per year)**
- **Gifts to a class (not based on rank)**
- **Awards**
- **Social events**
- **Outside personal or business relationships**
- **Widely attended gathering**
  - **5 CFR 2635.204**

EXCEPTION ?

(5 C.F.R. 2635.202(c))

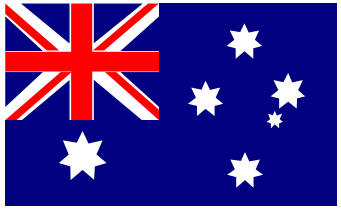
- **NOT if gift undermines the integrity of the Government. That is, if it is equivalent to bribery or creates that appearance**
- **NOT if it violates procurement integrity**
  (See FAR 3.104-4(f))
- **NOT if frequency would undermine integrity**

IMPROPER GIFT – WHAT CAN YOU DO?

- **<u>Eat It!</u> Food may be shared in office**
- **<u>Return It.</u>**
- **<u>Pay for It</u>.**
- **<u>Give It to Uncle.</u> Uncle Sam is there for you and will relieve you of your unwanted burdens.**
  - **5 CFR 2635.205**

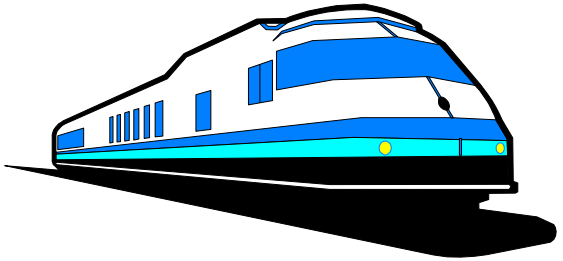
FOREIGN GIFTS

- **5 U.S.C. 7342**
- **Gifts in excess of $305 (value in U.S.) can only be accepted behalf of U.S.**
- **Your service has a GSA custodian for such gifts**
- **Meals and entertainment**
- **Travel originating and ending OCONUS**

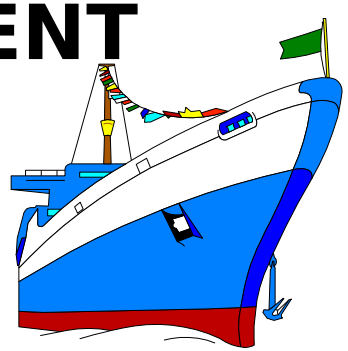


ACCEPTANCE OF TRAVEL EXPENSES from Non-Federal Sources (31 USC 1353)

- **NO SOLICITATION**
- **ONLY OFFICIAL TRAVEL**



- **ONLY FOR CONFERENCES**
- **DO NOT CLAIM REIMBURSEMENT**



1353 TRAVEL Cont'd

- **You must have prior written approval of travel approving authority and Ethics Counselor**
- **You are encouraged to accept "in kind" expenses**
- **If value is over $250, you must file a report thru Ethics Counselor to OGE**
- **1353 may be used on gift of travel from a foreign govt**

GIFTS FROM SUBORDINATES

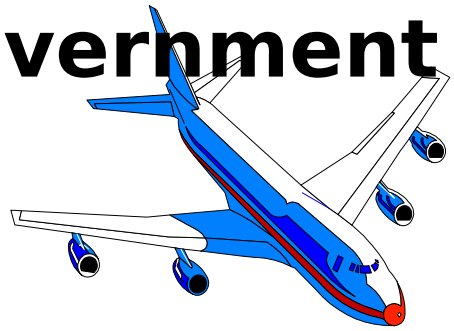
- **<u>Occasional gifts</u> (birthdays, holidays etc.) limited to $10 in value**
- **<u>Social occasions</u> (food may be shared in the office/home)**
  - **5 CFR 2635.302-4**

SPECIAL INFREQUENT OCCASIONS

- **Such as retirement or reassignment**
- **Limited to $300 per donating group**
- **Per individual $10**
- **No one can donate to more than one group**
- **Must be voluntary (suggest organizer be junior, and don't keep lists)**
- **Finally, what is a "donating group?"**
  - **DoDD 5500.7-R, para. 2-203**

FREQUENT FLYER MILES

- **Changed by FY 2002 NDAA**
- **FFM form official travel now personal property**
- **Must be obtained under same rules as for general public**
- **No additional cost to government**
- **Retroactive**



AIR WARS
What Can You Use?

- **<u>VIP Lounge Privileges</u> (based on frequent flyer status)**
- **<u>Upgrade coupons</u> (not based on Federal status or rank)**
- **<u>On the spot upgrades</u> (not based on rank)**
- **<u>Compensation</u> for loss or injury**

AIR WARS - BUMPS?!

- **Not air pockets--We're talking loss of seat**
- **Voluntary Bump--You keep the benefits**
- **Involuntary Bump--Govt gets the swag**
- **Does this make sense?**
  - **Yes, because *KEY CONCEPT:* you are using personal time for a voluntary bump, and you are on the Govt clock when it's involuntary.**
  - **JTR U1200B, Comp Gen opinion**

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SANITY CHECK

- **Anytime you legitimately occupy a first class seat or use a VIP lounge, consider the appearance**
- **Using travel perks while in uniform invariably results in public inquiries and complaints**

Questions?